

REMARKS

I. Rejection of Claims 29-39 under 35 U.S.C. § 251 Based Upon Reissue Recapture Doctrine.

Section 1 of the Office Action rejected Claims 29-39 under 35 U.S.C. § 251 as "being an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the present reissue is based." Applicant respectfully asserts that the broader subject matter claimed in the present application was not relinquished in the original application, and accordingly recapture estoppel does not apply in this case.

The Examiner refers to the "Reasons for Allowance" recited by the examiner of the original patent application as basis for the assertion that the reissue recapture rule applies to the present application. Applicant respectfully asserts that the examiner's reasons for allowance in the parent case may not provide such a basis because there was no surrender of subject matter.

The lack of a comment on "Reasons for Allowance" may give rise to a presumption that Applicant acquiesced to the reasons set forth by the Examiner. However, such acquiescence merely implies that the Applicant agreed with the Examiner that the claims were allowable over the cited art due to the inclusion of the limitations set forth. In the present situation, Applicant agrees that the claims of the original patent, including the limitations set forth by the Examiner in the reasons for allowance, are allowable over the cited art. However, this does not imply that any broader subject matter was relinquished, as may be the case when broader claims are amended in response to a rejection over prior art.

Referring to Section 1412.02 of the Manual of Patent Examining Procedure, when a rejection is based upon recapture, the Examiner should explain "where in the original application the narrowed claim scope was presented/argued to obviate a rejection/objection." See "Examiner Note" under "Rejection Based Upon Recapture," § 1412.02, "Recapture of Canceled Subject Matter." Applicant respectfully asserts that the Examiner has not presented any area in the original application in which a

narrowed claim scope was presented in response to a rejection and respectfully requests that the Examiner present such an explanation.

II. Rejection of Claims 33-34 and 38-39 Under 35 U.S.C. § 112, Second Paragraph

Section 3 of the Office Action rejected Claims 33-34 and 38-39 under 35 U.S.C. § 112, second paragraph, stating that the recitation of "the appropriate control signals" in claims 33 and 38 lacked antecedent basis. In response, Applicant has amended the language of claims 33 and 38 (which has been incorporated into claims 29 and 35 respectively) to recite "appropriate control signals" in place of the original language. In view of these amendments, Applicant respectfully requests reconsideration of claims 29-32, 33-37, and 39.

III. Rejection of Claims 29-39 Under 35 U.S.C. § 103(a) Based Upon Pitt et al. in View of Wieneke et al.

Section 5 of the Office Action rejected Claims 29-39 under 35 USC § 103(a) as being unpatentable over Pitt et al. U.S. Patent No. 3,093,946 in view of Wieneke et al. U.S. Patent No. 3,606,742. With this response, independent claims 29 and 35 are each amended to incorporate the limitations of dependent claims 33 and 38, respectively. Claims 33 and 38 are cancelled and Claims 34 and 39 have been amended to depend from independent claims 29 and 35 respectively. Independent claims 29 and 35, as amended are believed to overcome the rejection. Dependent claims 30-32, 34, 36-37, and 39, which depend from claims 29 and 35 are also believed to overcome the rejection for the same reasons.

Independent claims 29 and 35, as amended, both recite an electronic control circuit that monitors the rotor speed and determines the appropriate control signals to send to the variable displacement pump to maintain the selected rotor speed. Thus, claims 29 and 35 both recite a combine that monitors the actual speed of the rotor itself and varies displacement from a pump to maintain a selected or desired rotor speed.

Neither Pitt et al. nor Wieneke et al., alone or in combination, disclose or suggest the combine recited in either claims 29 or 35. As acknowledged by the Examiner, Pitt et al. fails to disclose an electronic control for automatically setting the rotor speed. As a result, paragraph 5 of the Office Action cites Wieneke et al. and asserts that "Wieneke et al. teaches that it is desirable to provide a combine with an electronic control system that automatically adjusts the speed of the rotor in response to sensed conditions, including the speed of the threshing rotor (Col. 2, lines 35-42)." However, Wieneke et al. does not teach the use of an electronic control system that monitors the actual speed of the rotor itself as means for controlling a variable displacement hydraulic pump to maintain a desired rotor speed. In contrast, the only "sensed conditions" taught by Wieneke et al. include "type of crop, its moisture content and the threshing gap." (Col. 2, lines 39-40). Wieneke goes on to state that these sensed conditions "largely determine the functional connection between throughput and threshing-cylinder speed" (Col. 2, lines 41-42). Nowhere does Wieneke et al. state that the threshing-cylinder speed is itself sensed or monitored to vary displacement of a pump to maintain a selected or desired rotor speed.

Although Wieneke et al. does disclose the use of a speed sensor 10 that senses the speed of threshing-cylinder 5, the data obtained from speed sensor 10 is not utilized to adjust the output from the hydraulic pump to maintain the rotor at a desired or selected speed. In contrast, the control circuit element 12 of Wieneke et al. merely compares the sensed speed of threshing-cylinder 5 with a measured crop throughput to determine whether the speed of the threshing-cylinder 5 itself should be increased or decreased. The control circuit 12 of Wieneke et al. further imposes a delay if the speed of the threshing-cylinder must be decreased. Once again, control circuit element 12 of Wieneke et al. does not maintain a constant selected rotor speed by adjusting output from a variable displacement hydraulic pump based upon the monitored or sensed rotor speed. Accordingly, independent claims 29 and 35, as amended overcome the rejection under 35 USC § 103 based upon Pitt et al. in view of Wieneke et al.

IV. Conclusion

Claims 29-32, 34-37, and 39 are pending in the present application. Claims 29, 34, 35, and 39 have been amended and Claims 33 and 38 have been canceled. Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

Respectfully submitted,

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MARKED UP VERSION SHOWING CHANGES MADE

Below are the marked up replacement claims:

29. (Amended) A combine for harvesting a crop due, in part, to the rotation of a rotor, the combine comprising:

an engine;

a hydraulic pump driven by the engine;

a hydraulic motor driven by the pump, wherein the motor drives the rotor; and

an electronic control circuit, wherein the electronic control circuit maintains a selected rotor speed by regulating the speed of the motor and wherein the electronic control circuit monitors the rotor speed and determines appropriate control signals to send to the variable displacement pump to maintain the selected rotor speed.

34. (Amended) The combine of Claim 29 [33], wherein the variable displacement pump is controlled by changing the pump displacement.

35. (Amended) A combine for harvesting a crop, comprising:

an engine;

an electronically controlled variable displacement hydraulic pump driven by the engine;

a hydraulic motor driven by the hydraulic pump;

a rotor driven by the hydraulic motor; and

a control circuit that electronically controls the rotor speed by regulating the speed of the hydraulic motor via control of the variable displacement hydraulic pump and wherein the control circuit monitors the rotor speed and determines appropriate control signals to send to the variable displacement hydraulic pump to maintain a predetermined rotor speed.

39. (Amended) The combine of Claim 35 [38], wherein the variable displacement pump is controlled by changing the pump displacement.

**STATUS OF CLAIMS AND SUPPORT FOR CLAIM CHANGES PURSUANT TO
37 C.F.R. § 1.173(c)**

As of the filing date of this amendment, the status of the claims is as follows. Claims 1-28 were deleted in the application as filed. Claims 29-35 were added in the application as filed. Claims 29, 34, 35, and 39 are amended herein. Claims 33 and 38 are canceled herein. Therefore claims 29-32, 34-37, and 39 are pending in the present application.

Support for the amendments to claims 29 and 35 is provided by original dependent claims 33 and 38, the limitations of which have been incorporated into the independent claims.